IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 33510 of 2007(L)

CC.1349/2005 of J.M.F.C.,KARUNAGAPPALLY
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PETITIONER:

K.P.GOPINATHAN PILLAI, KALPAKAM PADA SOUTH, KARUNAGAPPALLY, KOLLAM (EMPLOYED AT POST BOX 21404, DOHA, QUATAR) REPRESENTED BY HIS POWER OF ATTORNEY HOLDER VIJAYAN PILLAI.K.P., KOKKARIKKAL PUTHEN VEEDU, VADAKKUMTHALAMURI, KARUNAGAPPALLY.

BY ADV. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH

RESPONDENTS:
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1. **STATE OF KERALA REPRESENTED BY STATE PROSECUTOR, HIGH COURT, ERNAKULAM.**

2. **B.USHA, W/O.V.ANIL, VADAKKUMTHALA EAST POST, KARUNAGAPPALLY.**

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

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W.P.(C) No. 33510 of 2007

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Dated this the 16th day of November, 2007

JUDGMENT

The short grievance of the petitioner, who faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act, is that the learned Magistrate is unnecessarily insisting on his personal appearance in the course of the trial. The petitioner had come to this Court earlier and directions were issued vide Ext.P5 order dated 14.12.06 in Writ Petition No. 27482/06. The petitioner later appeared before the learned Magistrate. He was exempted from personal appearance. His plea was to be recorded on 30.6.07. The petitioner was directed to appear in person for recording his plea. The learned counsel for the petitioner submits that it was so directed in spite of the request made by the learned counsel for the petitioner that he may be permitted to advance the plea on behalf of the accused. On the next date, the petitioner was absent. An application was filed. The said application was dismissed and the learned Magistrate has issued non bailable warrant against the petitioner. The learned counsel for the petitioner submits that the learned

Magistrate has not followed the dictum in **Noorjahan v. Moideen** (2002 (2) KLT 756) and **Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd**. (2001(3) KLT 307 (SC). The learned Magistrate must have permitted the petitioners to advance his plea through his counsel, submits the learned counsel for the petitioner. I find merit in that submission of the learned counsel for the petitioner and I am satisfied that appropriate directions can be issued in favour of the petitioner.

2. In these circumstances this writ petition is allowed. The learned Magistrate shall exempt the petitioner from personal appearance and shall permit him to advance his plea through his counsel. Warrant of arrest issued against the petitioner on 30.7.07 shall not be executed and no further proceedings shall be initiated on the ground that the petitioner was absent on 30.7.07.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE